

**United States Senate**

**HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE**

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**Edward M. Kennedy, Chairman**

**Second Report on Marketing Practices  
in the Federal Family Education Loan  
Program**



**September 4, 2007**

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**NOTE ON ERRATA:** Please note that page 44 of the first version of this report erroneously discussed New England Institute of Technology in the context of restrictive provisions concerning consolidation loans. There was no executed agreement between Sallie Mae and New England Institute that contained such restrictive provision -- Sallie Mae proposed such an agreement, and the school did not agree. The report has been corrected to include a LOU (between Sallie Mae and USC) that was executed (and is also discussed elsewhere in the report).

## **Executive Summary**

This report was prepared by the Chairman's Staff of the Senate Health, Education, Labor and Pensions Committee ("Committee") and is the second report setting forth the findings of an investigation into marketing practices in the Federal Family Education Loan program ("FFEL"). The report addresses a discrete set of marketing practices, some of which were addressed in the first report and others which are newly examined here:

- **Some lenders provided donations, services, private loan funds, and other benefits to colleges in exchange for preferential treatment with regard to student loans, including placement on the college's preferred lender list;**
- **Some lenders made improper payments to schools, based on loan volume, and gained preferential treatment for FFEL loans in exchange for such payments;**
- **Two lenders entered into an improper agreement with a guaranty agency under which (1) the lenders paid the guaranty agency a marketing fee which violated the inducements prohibition and (2) the guaranty agency provided free personnel to schools in exchange for FFEL market share;**
- **Some lenders, schools and alumni associations entered into agreements that improperly constrained financial aid officers from providing unbiased and neutral financial advice to students.**

As described in the first report, the Chairman initiated an investigation earlier this year in response to information obtained by his office indicating that lenders participating in the FFEL program had engaged in conduct that violated section 435(d)(5) of the Higher Education Act, which prohibits lenders from offering compensation to schools in exchange for preferential treatment concerning FFEL loans. The Chairman sent document requests to sixteen FFEL lenders requesting information on compensation, favors or benefits offered or provided to schools in exchange for preferential treatment, including placement on so-called "preferred lender" lists.

Together, the student loans held by these sixteen lenders represented 72% of all outstanding federally-guaranteed student loans in 2006. While the investigation does not purport to examine practices at all lenders and schools participating in the FFEL program, the scope of the investigation is sufficiently broad to enable the Chairman to draw conclusions about practices across the industry.

## **I. Donations, Private Loan Funds and other Benefits in Exchange For FFEL Market Share**

This report supplements the findings of the Chairman's first report on inappropriate and prohibited practices by lenders and schools. As in the first report, our continuing investigation shows that schools and financial aid offices often solicit, and lenders provide, various types of in-kind compensation that could otherwise be used to reduce students' loan burden.

### **A. Donations**

Deal sweeteners that are clearly prohibited by the Higher Education Act are offers of donations or other funds in exchange for preferential treatment on FFEL loans. Perhaps the most egregious example uncovered by the Chairman's investigation of such a proposed quid pro quo involves Nelnet and the University of Maryland. According to Nelnet and the University, Nelnet sponsored the University's 2006 "Maryland Day," paying \$50,000 to defray expenses of the event. After the event, a Nelnet sales representative suggested to a University official that Nelnet should receive FFEL preferred lender list placement in exchange for its sponsorship. The official rejected the request and immediately notified the University's president and a Nelnet executive. Nelnet removed the representative from the University of Maryland account but did not fire the employee.<sup>1</sup>

Concerning donations of funds, SunTrust has recently acknowledged to the Chairman's office that it has,

from time to time, offered, donated, or paid funds to an Institution of Higher Education in exchange for an agreement that the Institution of Higher Education exert efforts to increase FFELP volume with SunTrust. These situations appear to be related mostly to scholarships and other sponsorship donations in support of events or functions of Institutions of Higher Education. [Letter from Counsel for SunTrust to Committee staff, April 27, 2007]

Indeed, an internal email from an Assistant Vice President demonstrates that SunTrust views donations to colleges as marketing opportunities. Forwarding a solicitation from The University of Texas Pan American to sponsor their Financial Aid Fair, the SunTrust VP wrote to colleagues:

Thanks. I would say let's do \$300. We haven't even made \$50k this year, we need to figure out how to penetrate this school. Exhibit 1.

Similarly, an internal Citizens Bank presentation suggests that building financing is viewed as potential marketing leverage:

<sup>1</sup> Interviews with University and Nelnet officials.

- University of Hartford: Opportunity exists at University of Hartford where Citizens provided financing for new science building. They work with Dean of Admissions and CFO – Beverly Matson. Ed Finance will bring this to DFA’s attention.

Exhibit 2. Citizens describes this document as simply sharing relevant information between different parts of the bank.

A Citizens Bank sales narrative about the University of Connecticut uncomfortably juxtaposes a college official’s solicitation of donations with discussion of position on the “Stafford list”:

...how can I be on the Stafford list for 05 they are looking to make changes....Pam says that if we can b[u]y a box for football or support the Athletic dept. that would help. Anything to get us more visable [sic] on campus. That’s what Peoples did, they are a “friend” of the university...\$. Exhibit 3.<sup>2</sup>

Several other Citizens Bank internal documents concerning donations to specific colleges show that the bank viewed such donations as a marketing investment. In an August 2003 internal email, Citizens employees discuss a “\$3600 sponsorship to St. Anselm [College] to cover the cost of a...consultant for 3-4 days...The goal and justification would be that St. A’s is an exclusive account with \$8 million in annual volume. We would like to maintain the exclusivity with the new [Director of Financial Aid].” Exhibit 4. The amount was later increased to \$5,000.

Another e-mail concerning sponsorship of a 2004 dinner at Sacred Heart University shows a similar arrangement: “[sales representatives] are asking that we once again sponsor this event in the amount of \$2,500.00, which was budgeted for in 2004. Sacred Heart is a \$6 million dollar school and this will allow us to maintain our preferred status as well as grow our volume to potentially \$8 mill in 2004.” Exhibit 5.

A March 2003 SunTrust sales report on Florida State University offers another example of favors lenders provided to school officials. In the midst of a discussion about competition for FSU’s School As Lender deal, the SunTrust representative describes personal benefits provided to FSU’s director:

Darryl [Marshall, Director of Financial Aid] advised that Sallie is getting ready to make a push for school as lender. He wanted to make sure we don’t get left out of the running. Moving ahead on this. Gave Darryl Nelnet’s \$5,000 scholarship. Gave him TPC [Tournament Players Champion (golf)] tickets for his kids. Exhibit 6.

Entries in a tracking system for SunTrust sales representatives show how the bank provided favors to Mr. Marshall:

<sup>2</sup> Citizens advises it did not buy a “box” nor did it provide sponsorship to the Athletic Department.

Spoke with Darryl about coming to Jax [Jacksonville] for a game. He is very interested in coming in for the Pittsburgh game.” Exhibit 7.

- 7/20/2001, “Sent [SunTrust] centerpiece to [Darryl Marshall] today per anna’s request;”
- 8/3/2001, “Ordered 8 golf umbrellas to be sent per anna’s request;”
- 8/9/2001, “Ordered 4 [SunTrust] golf umbrellas per anna’s request.”
- 8/24/01, “Met with Darryl while working in the office helping students fill out MPNs. He was appreciative of all his lenders’ and servicers’ time and assistance.” Exhibit 8.

A SunTrust chart graphically illustrates that benefits provided to colleges, financial aid offices, and college officials were viewed as marketing expenses designed to expand market share at that school. An internal document entitled “FAO [Financial Aid Office] Touch Points” contains information on “Costs of mailings and gifts compared to school volume.” Exhibit 9. Succeeding pages of the chart, entitled “SunTrust Education Loans, Comparative Volume Analysis, [SunTrust] Volume at Schools Receiving Summer Boxes and Holiday Gifts in 2005,” list the colleges to which SunTrust has given gifts, along with SunTrust volume at those schools in 2004 and 2005. Exhibit 10.

The investigation also found that some school officials solicit donations from their preferred FFEL lenders. For example, an internal SunTrust email discusses Freed-Hardeman University’s requests for donations:

Larry’s not being shy about asking for money. He called me on Friday to ask that we become the sponsor for their intramural sports program. MOHELA did it last year...He told me that the sponsorship amount for the intramural program is \$5000. Exhibit 11.

An internal lender email shows similar lobbying by college officials for donations from lenders on the preferred list:

I received a letter today in the mail from Ellen Taylor at Marywood University. She is requesting of their preferred lenders to send exhibition materials (pens, stickies, etc.) and/or sponsorship money to their first annual Student Services Fair that will be held on March 11, 2004. Exhibit 12.

An email from a college official at Hampton University shows a request to lenders for “sponsorship assistance.”

Per our call this morning, it’s that time of the year again for sponsorship assistance from each of our respective lenders. This year, we are requesting (a little less) from each lender, a check in the amount of \$417 to be made payable to Hampton University, Office of Financial Aid and Scholarships—Special Activities Fund. Exhibit 13.

In response to the solicitation, a Citizens Bank employee notes:

Goal/Justification: Hampton University has asked us to once again support them, along with the other lenders in the lender consortium, with their student activities fund....We will be recognized as one of the sponsors for this initiative and this will further help us in getting the Citizens Bank name out to potential borrowers. In addition, this sponsorship provides a value added service to the school and strengthens our commitment to Hampton University and the lender consortium. Expected Sales Volume: \$3MM FFELP. Exhibit 14.

Another email concerning a sponsorship for Colby Sawyer College shows the linkage between charitable donations and market share:

Here is the sponsorship for Colby Sawyer College. I would like to offer \$1000.00 as they have issued an RFP that is due on July 25. The RFP involves an exclusive relationship for approximately \$7mm in volume. Please let me know if this is okay.

Exhibit 15.

Other emails show similar solicitations by Baptist Bible College and Morehouse College:

I received a solicitation the other day from Jonathan Kirby, the student loan advisor, at Baptist Bible College. He is looking for a monetary contribution to the a Golf-A-Thon that the school is hosting. Jonathan will be participating in the golf-a-thon and is asking for either a pledge amount for each hole played or a one-time monetary contribution.

Historically, we have not done a lot of volume at this school, and, as you know, there is high turnover in the FA Office. The current Director, who has a particular loyalty to PNC, will be retiring within the next year and Jonathan is slated to take over his position. Jonathan does not possess this particular loyalty that the current DFA has, so I'm looking at this as an opportunity to do more business with this school. Jonathan has already said that he will add Citizens to his PLUS drop-down box on the AES website.

As per the 2004 Market Measure report, Baptist Bible does approx \$3.5 million in FFEL.

Exhibit 16.

This is a sponsorship request. The school is Morehouse College. The contact is James Stotts, DFA. Requested amount is \$3000. The DFA wants his lender partners to sponsor three tables, for his staff and their guest, at the schools major/only fundraiser of the year. Each table cost \$5000 for a total cost of \$15,000. This cost will be shared by SLMA, USAF, AmSouth, NellieMae, and us. Conversely, we sponsored half of a table last for \$2500 (which the school never invoiced us for).

We are the #1 Signature lender, among three (AmSouth & Nellie Mae). Our 2004 volume was \$1.1mm, up \$829, 336 from 2003. I expect it to nearly double in 2005. Moreover, all discussions indicate that Morehouse is planning to return to FFELP in 06-07.

Exhibit 17.

## **B. Opportunity Loans**

Another inducement used by lenders to expand FFEL market share involves private loan funds that are offered to colleges with little or no underwriting criteria.<sup>3</sup> Colleges can distribute these funds at their discretion, thus increasing enrollment and tuition revenue. Internal lender documents make clear that lenders do not expect to make money on these loans – Sallie Mae calculations, for example, show for Opportunity Loans offered to a particular college an expected default rate of 70%, an expected yield of negative 9%, and

<sup>3</sup> This category of private loan funds will be referred to herein as “Opportunity Loans.”

an estimated return on equity of negative 3%. Clearly, these funds are considered a marketing expense rather than a profit center.

In return for providing these funds, lenders often ask for preferential treatment – for example, placement on the FFEL preferred lender list, status as the college’s exclusive FFEL lender, or efforts by the college to steer students to the lender’s loan products. Many colleges solicit Opportunity Loan funds and readily grant preferential treatment to lenders who provide them. For example, an internal lender strategy presentation describes how the “corporate office” at Lincoln Technical Institute “dictates who the loan volume should go to based on the ‘opportunity loan’ money they have available and the commitments they made regarding these funds.” Exhibit 18.

### 1. Sallie Mae

Internal Sallie Mae documents show that the company used Opportunity Loan funds as a bargaining chip to trade for expanded FFEL market share. In a “Request for Financial Analysis for Custom Deal” (updated 03/5/2003), a Sallie Mae sales representative notes that Nova Southeastern University “is requesting an Opportunity Loan to bridge the gap for ineligible Signature Loan [a Sallie Mae private loan product] applicants – including international students.” The document continues:<sup>4</sup>

[REDACTED] Sallie Mae already has the lion share of the volume at this school. The school will be offering an RFP in 2005 for their graduate volume in a school as lender deal. That volume is currently owned by Nelnet. Sallie Mae is in great standing to receive over ½ of the total grad volume – now over [REDACTED]. However, the school is prematurely requesting the opportunity loan which we had intended to extended as potential leverage in the bigger deal. We want however to only offer [REDACTED] in this offering with the “carrot” that much better eligibility can be realized with the big deal.

This document demonstrates that Sallie Mae intended to use Opportunity Loan financing as leverage to gain expanded market share of the college’s graduate FFEL volume. Sallie Mae’s market share of FFEL volume at the school in 2006 was 31%.

<sup>4</sup> Citing concerns that the document cited herein contains confidential business information, Sallie Mae has requested that the full document not be included in the appendix.

Another internal Sallie Mae “Custom Deal Request Form,” dated February 2005, shows that Case Western Reserve University required Opportunity Loan funding in order for Sallie Mae to maintain its status as an FFEL preferred lender. In formulating a loan proposal for the college for the 2005-2006 academic year, a Sallie Mae employee notes that “Opportunity Loan Funding request [by school] to [increase amount]. Pool has grown each year of the custom deal to keep up with students as they migrate from freshmen to sophomore etc...”<sup>5</sup> Subsequent internal Sallie Mae emails show that Opportunity Loan funds were provided to Case in exchange for expanded FFEL market share, specifically through an extended School As Lender arrangement for graduate FFEL loans:

████ has backed up my meeting until end of next week which buys us a few more days to get the Fico from █████. I think our approach is solid & on target to expand the SAL partnership 2 years in exchange for giving additional Opport \$ and continuation of "0fee" premium offset, expanding additional credit tier offers no real benefit. Our proposed offer is SAL at █████ ROE, overall campus is at █████ (if we need to get more aggressive on Opp it could drop to █████). Will forward our final proposal for your approval early next week.

Exhibit 19.

Indeed, a Sallie Mae “Letter Of Understanding” with Case Western shows that Opportunity Loan amounts increased 300% from 2004-2005 to 2005-2006, and another 25% the following year. Exhibits 20, 21. As predicted in the email above, the increase in the Opportunity Loan amount had the intended effect on Sallie Mae’s effort to renew an existing School As Lender arrangement for graduate FFEL loans. Summary documents provided by Sallie Mae indicate that the arrangement was renewed.

Internal documents tracking a negotiation with Universal Technical Institute also show that Opportunity Loan funds played a central role in Sallie Mae gaining “exclusive preferred lender” status at the university. A Sallie Mae employee’s description of UTI representatives’ reaction to an April 21, 2005 Sallie Mae presentation illustrates this dynamic:<sup>6</sup>

3) UTI seemed to appreciate the potential increase in Opportunity loans and in zero FICO score loans if Funds were to become the exclusive guarantor.

Indeed, UTI signed a four year Letter of Understanding with Sallie Mae in June 2005 which established Sallie Mae as the exclusive FFEL lender:

UTI will use Sallie Mae Education Trust...as its primary FFELP lender and Sallie Mae Education Trust will be the only lender that UTI will promote to UTI students and their parents. Exhibit 22.

<sup>5</sup> Citing concerns that the document cited herein contains confidential business information, Sallie Mae has requested that the full document not be included in the appendix.

<sup>6</sup> Citing concerns that the document cited herein contains confidential business information, Sallie Mae has requested that the full document not be included in the appendix.

The Letter of Understanding provided three times the amount of Opportunity Loan funds to the school as in the prior academic year. Exhibit 23. Internal lender documents show that Sallie Mae captured 99% of UTI's FFEL volume in 2006.

A similar strategy was employed in Sallie Mae's negotiations with High Tech Institute, a for-profit proprietary school. Notes from a September 2004 meeting between Sallie Mae and the school indicate that Opportunity Loans were part of the negotiation over a comprehensive loan package including FFEL loans.

A year later, an October 2005 "Custom Deal Request Form" for the school shows that Sallie Mae offered more Opportunity Loan funds than initially contemplated in that meeting and that the company sought to increase FFEL market share by increasing the amount of Opportunity Loans:

School currently has \$[amount redacted] MM in opportunity and recourse. We are looking to increase that to \$[amount redacted] MM for each program based on increase in FFELP volume.<sup>7</sup>

Indeed, an internal sales report for the next year, describing the terms of an agreement from October 2006 through June 2010, shows a significantly larger volume of "recourse loans" were provided to the school.<sup>8</sup> Sallie Mae had a 76% market share of FFEL volume at the school in 2006.

A Sallie Mae email concerning Virginia Union College starkly illustrates why including Opportunity Loans in negotiations involving FFEL loans works to the detriment of FFEL borrowers. Here, the school surrenders valuable FFEL borrower benefits in exchange for Sallie Mae Opportunity Loans. ("OL" stands for Opportunity Loans, "CB" stands for "Cash Back," a package of Stafford loan borrower benefits):

We are presenting a custom deal to Virginia Union College with that includes zero fees for AMS, Nellie Mae and the Trust. The school has told us that they want the OL as well. What we've done is eliminate the back end benefit of CB in order to keep the OL for the school.

We currently have SunTrust in the deal with standard Stafford benefits (CB). In light of SunTrust going zero fees in VA, are you okay with us including you in the deal with zero fees but no back end benefit for Stafford? Let me know if you approve. Thanks.

Exhibit 24.

Sallie Mae and its lender partners (banks with whom the company has agreements to purchase loans after origination) have almost a 50% share of FFEL volume at Virginia Union.

<sup>7</sup> Citing concerns that the document cited herein contains confidential business information, Sallie Mae has requested that the full document not be included in the appendix.

<sup>8</sup> Citing concerns that the document cited herein contains confidential business information, Sallie Mae has requested that the full document not be included in the appendix.

## 2. Student Loan Xpress

Student Loan Xpress also offered Opportunity Loan funds in exchange for FFEL market share. Specifically, through the Xpress Override<sup>9</sup> and Credit Risk Subsidy Programs, introduced in the third quarter of 2005, the company offers schools private loan funds contingent on FFEL loan volume. While schools receiving funds do not sign a written contract, the company makes Xpress Override funds available only if certain FFEL volume goals are achieved.

For example, an internal presentation outlining the Xpress Override Program describes how an offer of funds is contingent on FFEL volume:

- o Program where School is offered a defined limit of loans to students who would not qualify for standard Xpress Loan offering
- o Program eligibility determined by
  - o Total relationship with the school including FFEL and private loan volume
  - o School profitability considering borrower benefits offered for FFEL programs

Exhibit 25.

Through a similar program called Credit Risk Subsidy, the company provides schools private loan capital with virtually no underwriting requirements. Unlike Xpress Override funds, Credit Risk Subsidy funds require the school to share in the risk of loans by reimbursing a portion of the funds received as “protection against risk of default on the Program Loans.” Exhibit 26. This default protection provision is oddly structured – the agreement provides that, after receiving a payment of Credit Risk Subsidy from Student Loan Xpress, the school will *reimburse* a portion of the loan funds received back to the company. Counsel for Student Loan Xpress advised Committee staff that for-profit schools requested this “round tripping” arrangement because it allowed them to report the full amount of Credit Risk Subsidy initially received from Student Loan Xpress – *before* reimbursing any amount back to the company – as non-Title IV funds.<sup>10</sup> Under the HEA, in order to receive federal funding,<sup>11</sup> for-profit schools must receive at least 10% of revenue from non-HEA Title IV sources.

Guidance from the Department of Education makes clear that, in order to meet this 10% requirement, schools cannot include amounts paid, or reimbursed, to a lender on “recourse” loans, defined as “[l]oans made by a private lender that are **in any manner** guaranteed by the school.” Federal Student Aid Handbook (“FSA Handbook”), 2007-

<sup>9</sup> Formerly known as the “Professional Judgment” program.

<sup>10</sup> For-profit schools constituted the majority of schools receiving Xpress Override or Credit Risk Subsidy funds.

<sup>11</sup> “For purposes of determining the 90/10 calculation, the following funds are considered Title IV: Federal Pell Grants, Federal SEOG (federal share only), Federal Stafford Loans (Subsidized and Unsubsidized), Federal Perkins Loans, and Federal PLUS Loans.” January 18, 2006 Final Audit Report, *Sanford-Brown Institute – Atlanta’s (SBI) Compliance with the 90-10 Rule for the 2003 Fiscal Year*, ED-OIG/A05f0017, p.4 (attachments).

2008, page 2-10 [emphasis in original].<sup>12</sup> The Department prescribes that amounts paid by the school to defray a lender's default risk cannot be counted in the 10% calculation:

The proceeds from recourse loans may be included in the denominator of an institution's 90/10 calculation for the fiscal year in which the revenues were received, provided that the institution's reported revenues are also reduced by the amount of recourse loan payments made to recourse loan holders during that fiscal year. FSA Handbook 2-10.

Loans made under the Credit Risk Subsidy program are "recourse loans," as defined by the Department. Each Credit Risk Subsidy contract clearly states that the amounts repaid to the company are not revenue attributable to the school: "School hereby acknowledges and agrees that it has no right, title, or interest in the Retained Funds and that SLX or its assignee is the sole owner of the Retained Funds." Exhibit 27. Therefore, reporting the percentage of Credit Risk Subsidy funds that is immediately reimbursed to the lender as protection against default as non-Title IV revenue is improper.<sup>13</sup>

Under Credit Risk Subsidy agreements, the amount of private loan funds a school receives is directly linked to Student Loan Xpress FFEL market share at the school. Specifically, the agreements provide that the amount of Credit Risk Subsidy funds provided cannot exceed a certain percentage of "all educational loans (including both loans made under the [FFELP] and loans not made under the FFELP [private loans] originated by" the company. Exhibit 28. Therefore, as Student Loan Xpress's share of FFEL volume increases, so does the amount the school is eligible to receive in Credit Risk Subsidy funds:

c. This Participation Agreement may be terminated immediately by SLX upon delivery of written notice to School if:

(1) Program Loans exceed 15% of all educational loans (including both loans made under the Federal Family Education Loan Program ("FFELP") and loans not made under the FFELP) originated by Lender, SLX or any affiliate of SLX and made to or for the benefit of students attending School during any academic year (July 1 through June 30); or

Exhibit 28.

Thus, the agreement rewards schools who increase Student Loan Xpress's FFEL market share with larger amounts of Opportunity Loan funds.

Student Loan Xpress agreements with schools demonstrate that Xpress Override and Credit Risk Subsidy funds were used as a deal sweetener to gain position on a school's

<sup>12</sup> <http://www.ifap.ed.gov/sfahandbooks/attachments/Vol2FSAHBKCh10708.pdf>, site last visited 9/2/07.

<sup>13</sup> A Report by the Department of Education Inspector General also makes clear that schools should not treat funds retained by the lender, or deposited into escrow, to protect against default as non-Title IV revenue for purposes of the 90/10 calculation. See Advanced Career Training Institute's Administration of the Title IV Higher Education Act Programs, ED-OIG/A04-B0019, September 2003.

FFEL preferred lender list. For example, a November 18, 2005 letter agreement with Daymar Colleges Group, LLC states that:

This letter (the “Agreement”) sets forth our agreement with respect to Student Loan Xpress, Inc. (“SLX”) being one of the preferred providers of student loans originated under the Federal Family Education Loan Program (“FFELP Loans”) for all of the 11 campuses and /or learning centers associated with Daymar College, Draughons Junior College and/or Paducah Technical College that are serviced by Daymar Colleges Group, LLC (DCG).

**Section 1. Preferred Lenders – Provision of Loans**

a. FFELP Loans: DCG hereby designates SLX as one of its preferred lenders of FFELP Loans for borrowers seeking to finance a program of education at DCG.

Language later on in the agreement makes clear that more than \$3 million Xpress Override and Credit Risk Subsidy funds played an integral role in the negotiation between Student Loan Xpress and Daymar:

b. Private Loans: DCG hereby designates SLX as the preferred lender with respect to private loans. SLX will coordinate the provision of such private loans to borrowers seeking to finance a program of education at DCG. Such borrowers will initially be provided the opportunity to apply for private loans originated by SLX under the Career Xpress program. If the borrower does not qualify for the Career Xpress private loan product; such borrower will then be provided the opportunity to apply for the SLX “Credit Risk Subsidy Program.” Finally, DCG will be given an additional pool of money (“Professional Judgment Program”) to help support the overall private loan process for DCG.

- c. Pool Amounts: The following pool amounts will be assigned to DCG for the 12-month period beginning with the date of the first loan processed:
- 1) Career Xpress – Tier 1: \$2,000,000.00
  - 2) Credit Risk Subsidy Program: \$1,000,000.00
  - 3) Professional Judgment Program: \$100,000.00 (\$50,000.00 in each of two approval “buckets”).

Exhibit 29.

Another lender’s internal sales report on Allied Medical Technical Institute reflects how SLX’s opportunity loan funds influence the process of choosing a FFEL lender:

Sharon and I met with Peggy and a staff member named Carleen. Allied has signed a corporate deal with Student Loan Express. This is not surprising based on Nancy’s relationship. The corporate deal includes Federal and Private. Student loan express is offering them their standard private loan product, Career Xpress Loan. They are offering them an opportunity pool and from the way Peggy talked they are approving the majority of loans. Peggy could not tell us the amount of the opportunity pool. Exhibit 30.

In a January 10, 2007 email, Student Loan Xpress personnel discuss the amount of Xpress Override funds to be provided to Kasturba Medical College, the U.S. parent company of the American University of Antigua:

\$300,000 is the current amount. However, I am willing to increase it to \$500,000.

We did discuss increasing it because of the delay in implementing CRSP. However, we decided to wait on actual performance on the FFELP side to see if we could justify it. In looking at the actual performance they are a little behind on FFELP (\$2MM after 6 months versus a target of \$6MM for 12 months), but very far behind on the core Private Loans (\$3.3MM for 6 months with a target of \$13.1MM for 12 months). This performance would not justify the increase, but in light of the CRSP delays I will authorize a \$200,000 increase to \$500,000.

Exhibit 31.

This email makes clear that “actual performance on the FFELP side” is the criterion by which the company determines whether to increase the school’s amount of available Xpress Override funds. These documents show that the company provided Xpress Override and Credit Risk Subsidy funds in exchange for expanded FFEL market share.

### **3. Citibank**

Documents from Citibank’s student lending unit also demonstrate that Citibank used Opportunity Loan funds (termed “Global Loan” funds) as a deal sweetener to increase FFEL market share or gain position on the FFEL preferred lender list. For example, a 2006 sales report listing “Major Accomplishments vs. Plans During Previous Year” states: “Scored exclusive preferred lender deal with 14 campuses of Bryant & Stratton Colleges in return for Global Funding.” Exhibit 32.

According to Citibank, Bryant & Stratton school officials requested that Citibank provide private financing for students who did not meet traditional underwriting criteria. In addition, financial aid officials expressed a preference for recommending a single lender to students on all campuses. Citibank confirmed that Bryant’s Director of Financial Aid offered exclusive FFEL lender status to Citibank in return for supplying Global Loan Funds. Citibank provided Global Loan Funds for four campuses, capping the total amount of loan funds at \$1.2 million.

Citibank’s market share at the school indicate that the deal worked as planned -- in 2006, Citibank captured 63% of FFEL loan volume at the 14 Bryant & Stratton campuses.<sup>14</sup>

In a similar document, a Citibank sales representative notes another achievement: “Secured Global Loan program for Pepperdine Seaver and School of Public Policy, estimated FFEL increase \$1MM.” Exhibit 33. Citibank confirms that Global Loan funds were provided to these two schools at Pepperdine and that the school requested the funds. The bank also asserts that there was no explicit quid pro quo between the school and Citibank.

Another sales report lists as a “Major Accomplishment[]”

<sup>14</sup> Pursuant to Citibank’s undertaking with the New York Attorney General, the bank’s student loan unit no longer participates in exclusive lender arrangements with schools.

\$250,000 global loan deal at Carnegie Mellon Heinz; moved to top spot for Stafford and pre-packaged grad PLUS. \$500,000 global loan deal at Carnegie Mellon Tepper; top spot for Stafford, Grad PLUS and private. Exhibit 34.

Citibank asserts that there was no explicit quid pro quo with the school. The bank acknowledges that the Tepper and Heinz schools requested Global Loan funds, Citibank obliged, and Citibank's position on the preferred lender list improved.<sup>15</sup>

### **C. Other Benefits and Favors**

A SunTrust internal email from 2005 describes a strategy to gain position on the lender list at the University of Texas Pan American by providing favors:

This is by far the hardest school in South Texas to get on the lender list...They only have 9 lenders and are willing to expand to 10 or 11....Hot buttons for this school...3) **they would very much like for us to provide a day retreat for them and are interested in my stress management seminar....**They want cool things to give out to the students then and some T-Shirts so that is a place for sponsorship. They do want help with print jobs and have just started using lenders for that and would love anything new and creative. Exhibit 35. (emphasis added)

Counsel for the University of Southern California and Citibank both confirm that a Citibank representative offered free Rose Bowl tickets to USC Director of Financial Aid Catherine Thomas in December 2006. Citibank advises that Thomas accepted the tickets on behalf of her staff and gave them to others. Both Citibank and USC maintain that the gift involved no quid pro quo.<sup>16</sup>

An internal Citizens Bank presentation lists a panoply of personal favors to be provided to targeted financial aid offices:

**Most important part of summer is getting in with people that are on the front lines and meeting and developing relationships with those**

<sup>15</sup> Interview with Citibank Attorney, 5/24/07.

<sup>16</sup> Conversations with Counsel for Citibank and University of Southern California.

people that are not in the decision making process. Keeping support staff happy.

Taking a massage therapist to the school and offering 5 minute massages to each colleague. Coordinate activity with another school that offers this service and work with this partner school as well. Manicures and pedicures offered to offices that only have female employees. You need a break today/Citizens Bank Stress Relief Day Courtesy of Citizens Bank. What about perception? Would this be considered acceptable business practice?

Scholarship drawings. Good will and great PR. Include all preferred lenders in drawing for a scholarship and hold drawing. Include a website for students to register. Get link to school's website and provide a drawing. Key Bank does 5 - \$1000 annually. Long term benefits and constant presence on school's website.

Exhibit 36.

An internal sales narrative demonstrates that Sallie Mae subsidiary Nellie Mae provided Fairfield University officials with baseball tickets, and that a school official solicited the same favor from other lenders:

We spent some time talking about Grad PLUS and that [Sallie Mae] will be creating webpages for the school. He hinted around to wanting redsox tickets adding [Nellie Mae] usually takes him once a year. Exhibit 37.

A similar solicitation is described in another sales narrative about a meeting with financial aid officials at Marist College:

Used the opportunity to discuss with DJ and Joe the grad prof wrapper that [Citizens Bank] produced last year. Reviewed edits and quantity. Joe brought up the NCAA women's final tickets again. I said that I would remind Michael and get an update. Exhibit 38.

Citizens Bank advises that it did not provide tickets to officials in either case.

A sales report describes an improper system at State University of New York-Cortland for choosing recommended lenders, based only on benefits to the school, not the student:

prepare managing your vendor relationships presentation. Also with Karen Taylor good visit with Dave and Karen. School uses ASA as guar. Dave's philosophy is to enter into a business relationship with his lenders. Kind of a quid pro quo. I'll give you loan business, you give me... Had a prepared list of events that his pl's had sponsored from prior year. He reviews this info with the lender and then makes a determination if they have continued to earn the right to do business (wording might be a bit blunt). He has also developed a rules of engagement doctrine for lenders. If they violate one of the tenets on dave's doctrine then they are abolished from the list and must sit in the corner until they earn the school's good graces.

Exhibit 39.

Internal JPMorgan Chase documents uncovered by the investigation show that various types of donations were given with an expectation of preferential treatment with regard to FFEL market share.<sup>17</sup>

- On a form requesting 1,000 lanyards for Ave Maria School of Law, the "Objective" is "To increase and maintain volume and lender list position." Exhibit 40.
- A form requesting T-Shirts for Paul Quinn College states as the objective "to retain 80% volume share that Bank One and Chase currently have." Exhibit 41.
- A form requesting custom print materials for Dillard University states, under the heading "Why are we doing this project?," "To maintain the volume we possess on this campus." Exhibit 42.
- A form requesting a donation to "help pay for" T-Shirts for Texas A&M University states the goal of the donation is "brand recognition and move into the 1<sup>st</sup> tier of Preferred Lenders on the Lender List." Exhibit 43.

<sup>17</sup> JPMorgan Chase advises Committee staff that it has since discontinued these practices and formally adopted an internal code of conduct for its Education Finance business that expressly prohibits, among other things, providing schools with printing services or promotional "give-away" items for distribution by schools to their students.

#### **D. “Value-Added Services”**

As the first report described, lenders frequently offer, and schools solicit, various services to colleges as deal sweeteners in an effort to gain FFEL market share. The term of art in the industry for these benefits is “value-added services.”

Internal Sallie Mae documents indicate that such services played a central role in negotiations with schools to determine the terms and conditions of FFEL loans. For example, the “Request for Financial Analysis for Custom Deal” form discussed above includes a space for “Other value added products that will be offered to the school (custom collateral, web based solutions, etc.).”

In Nelnet’s 2006 bid to become an FFEL preferred lender at Embry-Riddle Aeronautical University, it offered several “value-added services” and specifically quantified the monetary value of these services to the school. For example, Nelnet proposed a “technology support fund” for the school:<sup>18</sup>

- **An estimated technology support fund of approximately \$60,000 to assist Embry-Riddle Aeronautical University with Datatel Colleague programming and Web site development to enhance the financial aid process and related student services.**

The proposal summarized the value of these services to arrive at a total “economic benefit” to the college. In a table entitled “Economic Benefit to Embry-Riddle Aeronautical University,” the company listed the value of the “Technology Assistance Fund” as \$60,000 and the “Financial Aid Solutions Team (FAST – Annual)” as \$80,000,” creating a “Total economic benefit” to the university of “\$140,000+.”<sup>19</sup>

The proposal also described an array of services that benefit the university and its bottom line. A chart entitled “University Benefits” contains the following:<sup>20</sup>

<sup>18</sup> Citing concerns that the document cited herein contains confidential business information, Nelnet has requested that the full document not be included in the appendix.

<sup>19</sup> Citing concerns that the document cited herein contains confidential business information, Nelnet has requested that the full document not be included in the appendix.

<sup>20</sup> Citing concerns that the document cited herein contains confidential business information, Nelnet has requested that the full document not be included in the appendix.

- Nelnet will assume the cost of a technology assistance program to ensure a seamless and well-integrated transition to FFELP. The estimated direct value of the technology assistance program is approximately \$60,000. Nelnet believes that this program also will be responsible for saving the University out-of-pocket expenses associated with other technology modifications and interfaces that may arise in the course of the contract.
- Nelnet will work with the University to produce and underwrite hard-copy materials for students and parents based upon an agreed upon the Communications Plan.
- Nelnet will assume all reasonable site visit expenses incurred by Embry-Riddle staff. This includes trips to campuses as well as Nelnet servicing centers.
- The technology and customer support programs provided by Nelnet can be branded to the University, and will raise the overall quality of perceived customer service to parents and students.
- Nelnet believes that our Web-based system will contribute significantly toward reducing the cost of paper flow within the financial aid and business office.
- Nelnet's FAST service will allow the University to improve customer service and provide added resources to the institution without adding any additional cost. The estimated value of this service to the University could be as high as \$80,000 per year.
- Nelnet can provide the University with a number of valued-added products that complement our technology recommendations. Examples of these additional value added services include, but are not limited to, tuition payment programs, and bill presentment, and payment system for tuition and fees through the infiNet technology.

Similarly, documents tracking Nelnet's negotiations with Wayne State University – which ended in Nelnet being awarded a graduate FFEL School As Lender deal and most of the school's undergraduate FFEL business – show how Opportunity Loans and “value-added services” can play a significant role in negotiations over loan terms. An internal Nelnet memo describing the services to be offered to the college includes:

- Answer Service
- Opportunity Pool (Nelnet Select Private Loan)
- Communications – Marketing Customization

Exhibit 44.

Notations under the “Misc.” section of this memo make clear that the deal included steering of Wayne State students to Nelnet: “How will school ensure 50% of loan volume for Main Campus goes to Nelnet as lender?” Exhibit 44.

The most problematic deal sweetener provided by the lender, however, was a staff member paid for by Nelnet, described as an “on-site technical resource:”

#### **On-site Technical Resource**

- Nelnet to fund for tech resource position (IN)
- Need to define roles/expectations for tech position
  - Who will collect resumes and pre-screen—Nelnet
  - Advertising—Nelnet to help
  - Hiring
  - Position responsibilities
  - Reporting structure—WSU Assoc Director of Info Tech
  - Date on board—by June 1

Exhibit 44.

Later memos demonstrate that the “on-site technical resource” is a staff member, paid by Nelnet, who works full-time at the school. Handwritten notes on the document below indicate that the staff member was “on Nelnet payroll” and paid “\$90,000 as long as we have this deal w[ith] WSU.” The notes also indicate that the company hoped to use the answer service, which it describes as the neutral, unbiased “frontline voice of the Financial Aid Office,” to “soft sell” Nelnet products:

7)	Answer Service	
	Utilization of Banner (support of WSU Pipeline)	
	Timelines	Dist dates
	Status	checklist on Banner
	General FA Questions	
	Verification needs	
	Educate caller on web offerings	- decrease phone calls to the school
	Through discovery will learn if a soft sell is possible	
8)	Nelnet College Planning	
	a. Plus Loans	
9)	On-site technology position---	on Nelnet payroll \$90,000 as long as we have this deal w/ WSU. support FA in Banner
10)	Communication Campaign to students	
	- meeting Nelnet	
	- meeting WSU as your lender	
	-	
	11) Ed Training Budget	
	12) On-site Resource Person - C/D	

Exhibit 45.

Nelnet’s provision of training services was also assigned a financial value, which could have been bargained for by college officials to improve borrowing terms:

In an effort to support Wayne State University with their commitment to continuous training to staff and students, Nelnet will sponsor 30K in training related items. This is an annual sponsorship beginning with July of each academic year.

All ideas will need to be submitted for approval to ensure it meets the training criteria.

Exhibit 46.

These services, none of which improve FFEL borrowers' loan terms, appear on a matrix of Nelnet "borrower benefits" to be provided to the university:

	0% after 48 consecutive on-time payments	
Nelnet provides a full time technology professional in the Wayne State University financial aid office		Yes. Estimated economic value of \$90,000 annually
Nelnet Select Private Loan Program for Borrowers not qualifying for other private loan programs		Yes. Nelnet will provide \$300,000 of loan principal for the program annually and service all the loans. WSU will determine selection and award criteria

Exhibit 47.

Periodic updates that Nelnet provided to the university on the status of its "partnership" with the company confirm that the "value-added services" discussed above, scholarship funds and Opportunity Loans played significant roles in the university's decision to award Nelnet "preferred provider" status.<sup>21</sup>

<p>❖ <b>Technical support</b></p> <ul style="list-style-type: none"> <li>Nelnet provides a full-time technical support person on site that assists the Financial Aid Office with technical programming.</li> </ul>
<p>❖ <b>Nelnet College Planning Center</b></p> <ul style="list-style-type: none"> <li>As a customer, we are providing the Nelnet College Planning Center services for free. The Center, on WSU's behalf, provides custom communications to our students at any time we wish. They will print and pay postage for any mailing that we request to any WSU population (i.e., reminders to apply for scholarships, reminders to complete verification, reminders to renew FAFSA information). They will personally phone call each student with a custom message that we provide them. They will e-mail any message to any population that we request.</li> </ul>

<sup>21</sup> Citing concerns that the document cited herein contains confidential business information, Nelnet has requested that the full document not be included in the appendix.

❖ **Printing**

- Nelnet prints many of our expensive publications each year. These printing services save our division approximately \$25,000 in printing and supply costs each year. This cost includes education collateral, highlighters, chip clips, pens, key chains, cups, notebooks, t-shirt and polo shirts, lunch bags, and welcome back banners.

❖ **Nelnet Advisory Board**

- WSU has a reserved spot on the national Nelnet Advisory Board and the national Nelnet Technology Committee. We are encouraged to give input into processes and services on an on-going basis. Most of our concerns are addressed and incorporated into daily software capabilities.

❖ **Nelnet scholarship for WSU**

- Nelnet adds \$10,000 to our general scholarship fund each year.

As with the Embry-Riddle proposal, Nelnet provided a detailed analysis of the economic benefit of each of these services, and Opportunity Loan funds, to the University's bottom line. In a chart entitled "value analysis," the company summed the economic value of the services provided, arriving at an annual value of \$441,000 for the first year of the deal, \$538,000 for the second year, and \$601,446 for the third (not including revenue to the school from the School As Lender arrangement).<sup>22</sup>

Nelnet indicates that, taking into account undergraduate loans and graduate School As Lender loan volume, Nelnet's share of total FFEL volume at WSU is approximately 70%.

An October 30, 2003 letter from a Nelnet official to the Director of Financial Aid at Wayne State confirms that FFEL volume at the University was directed to Nelnet, and that the parties sought to keep the arrangement "on a 'need to know' basis":

<sup>22</sup> The services included in this value calculation were: "Financial Aid Solutions Team, Technical Resource Person, Education and training budget, Nelnet Choice loan [Opportunity Loan product], Customized marketing materials, and Loan Servicing fees." Citing concerns that the document cited herein contains confidential business information, Nelnet has requested that the full document not be included in the appendix.

Per your request, your decision to move all students (except Medical School) to Nelnet for 2004/2005 will be kept quiet and only communicated to Nelnet people on a "need to know" basis. I will begin preparing for the next step after I hear from you on if I've accurately captured the gist of our discussion. I will call you within the next week or so to confirm my recollection. Thank you for allowing us to be a part of making educational dreams possible for your students!

Sincerely,



Campus Solutions

Exhibit 48.

Internal Nelnet documents indicate that the lender provided Wayne State officials with an array of treats and perks. For example, in the fall of 2003, Nelnet paid for a variety of benefits:

**August 29, 2003**

***Welcome Back Care Packages for the Residential Hall Students:***

814 students  
Toothpaste  
Toothbrush  
Shampoo  
Conditioner  
Soap

**September Events**

***Welcome Back Week - September 2nd, 3rd, and 4th***

***Doughnuts and Coffee***

10 dozen doughnuts and coffee each day  
Estimated Costs: Not Confirmed

***A Welcome Back Bar-B-Que***

Hamburger  
Hotdogs  
Chips  
Soda Pop  
100 of each item each day  
Estimated Costs: Not Confirmed

***Movie Night - September 19, 2003***

Popcorn Machine \$75 rental fee

**October Event**

***Scholarship Pizza Party***

Want to host a pizza lunch for students and discuss how to apply for scholarships and tips on applying for scholarships. A great to advise students of our internal Private Scholarship Application for 2004-2005 which will be available in November.

**December Event**

**December 15, 2003**

***Late Night Breakfast for Students Studying for Finals***

We want to offer them Care Packages to include:

Coffee Packet  
Cookies  
Chocolates  
Pen/Pencil

Anticipated number of students to attend is approximately 500.

Exhibit 49.

Documents indicate that the breakfast and lunch events cost \$2200, and the movie night cost \$788. Exhibit 50. Documents uncovered by the investigation also indicate that Wayne State was assigned a budget for such “goodies.” In an email from a Wayne State official to Nelnet, the official asks:

Quick question for you. [WSU official] needs to order some goodies and t-shirts and I’m not certain of our budget at this time. Could you let me know how much funding we have remaining in the budget for this year. I’m sure it’s a lot but I need a definitive figure. Thanks!

The Nelnet employee sent the “budget for 05/06 and 06/07,” and the Wayne State official responded: “Based on what I’m reading we only have approximately \$10,000 left for the remainder of the year. Let me know if I’m correct.” Exhibit 51.

As discussed in the first Report, when schools “contract out” their entrance and exit counseling duties to lenders, such arrangements demand careful monitoring due to the risk of inappropriate marketing activities. An internal lender sales report demonstrates this risk, and an appropriate reaction by school officials:

I offered to come in to present a consolidation session, but [a financial aid official] told me that she already had that covered by Sallie Mae, as they are the [School As Lender] partner....She said she would consider it. She also told me that last year they brought in a lender (she could not remember which one) to conduct exit sessions and because [she] did not know any better at the time, the lender collected and kept the exit interview forms. It was over a month before the forms were returned to the school and the students wound up with a barrage of direct mailing as a result. She will not allow the lender to have contact with her students again.<sup>23</sup>

## **1. Printing**

The form used by SunTrust employees to request printing jobs for colleges illustrates that the bank considered these jobs as “favors” to aid in expanding FFEL market share. Each request form has a section entitled “Volume Projections,” including total Stafford and PLUS loan volume as well as SunTrust market share.

In an internal email, a SunTrust account executive justifies such printing projects as marketing tools for gaining loan share:

<sup>23</sup> Citing confidentiality concerns, the lender that generated this sales report has requested that the full document not be included in the appendix.

I would like us to do 4 print projects for Thaddeus Stevens College of Technology. They're a local 2-year school in Lancaster. Their volume is small, and my projections are extremely modest. Exhibit 52.

An internal College Loan Corporation sales document about University of Texas at Dallas (UTD) shows that lenders' expenditures on school printed materials pay off in exposure to students:

- UTD- asked us to participate with their financial aid booklet. They are going to display the logo of all lenders that donate to help defray costs on the back of the booklet.

Exhibit 53.

Another sales narrative shows a similar relationship between PNC Bank and Central Pennsylvania College:

Met with [Director of Financial Aid], Kathy Shepard. Currently, they use only PNC. PNC prints their wraps and they are the only lender listed on the AES drop-down box. Also, they currently list PNC Resource, Key, Campus Door and Natl Ed on their website as the alternative loans they recommend...When I questioned her as to what it would take to get on her list, she said that she has a good relationship with PNC and that they do a lot of printing for them. Exhibit 54.

A sales report concerning College Misericordia also describes a school request for favors:

PNC printed a big marketing piece and then all lenders contributed...Donna wants lenders who go the extra mile and who initiate things. Examples: Training for staff, orientations, exit counseling, phone calls. Exhibit 55.

Internal sales reports from Access Group also demonstrate offers of printing services in exchange for preferred lender list position:

SunTrust [the only lender listed for undergraduates] has 19% of [St. Thomas] University's loan volume and they print all their undergraduate pieces (which is quite a bit more printing than we do for the law school). I have stated that we would be willing to print more pieces for the school if we were to be the preferred lender at the University but [financial aid official] has not been willing to allow us this opportunity. Exhibit 56.

Other Access Group sales reports evince an uncomfortable juxtaposition between offers and solicitations of printing services and discussion of loan volume:

I dropped cookies off at the [Barry University] financial aid office to express appreciation for business and was invited to sit and chat with [financial aid officials]. Both commented that they really enjoyed this year's holiday brunch. Additionally, [we] discussed a custom print postcard for 2007-08. Each year the school prints a reminder postcard for students on how to apply/reapply for

financial aid and complete the FAFSA. [Financial aid official] asked that Access Group print 5,000 postcards for Barry. She thought it might help get the Access Group name out with her students. I thanked [her] for the opportunity to print the postcards for the school this year and for reducing the University's lender list from 15 to 7. This will surely help us grow volume at Barry next year. Exhibit 57.

## **2. Leveraging Banking Relationships**

Internal Citizens Bank presentations show a strategy for leveraging commercial banking relationships for FFEL business:

How easy would it be to coordinate an extra banking service for our customers? Do we have the internal resources to entice students to borrow with us and then stick with us for life? Heather is working on a Student Banking Initiative. If we can get the student to bank with us, we'll retain 5% as customers. Exhibit 58.

A sales narrative notes that Wachovia Bank was afforded preferential treatment at Lancaster General College of Nursing and Health Sciences due to its banking relationship with the school:

Met and had lunch with [Director of Financial Aid]...We are doing very well in volume at this school and Connie said that we should be doing even better in the upcoming months...The lenders that she is currently using are Bank One, Citizens and Wachovia, but she said that she is really only pushing Citizens and Bank One. She really doesn't like Wachovia and only says she uses them because they are the school's bank. Exhibit 59.

## **3. Providing Free Personnel to Financial Aid Office**

A SunTrust sales narrative illustrates that colleges give preferential treatment to lenders who make their employees available to work in Financial Aid Offices:

North Georgia College and State University – [sales representative] visited school to assist director with a banner process concerning HOPE students. Worked in the office entire day. Also worked with the assistant director, who handles all the loans, to verify their new loan application. SunTrust is now #2 on their lender list. [SunTrust representatives] will continue to strengthen this relationship to become #1. Exhibit 60.

An internal Citizens Bank strategy document describes the provision of staffing assistance and other training opportunities for staff to the financial aid office as a marketing tool:

**Clarion University of PA-** \$25M. Pheaa is exclusive lender. DFA has claimed that he doesn't know why they have so much volume. He has claimed to be final decision maker. \$5.5 M to Pheaa, \$3M PNC, etc. He is looking to make some changes to preferred lender list. He has claimed people on the board will make decisions for FAO. His direct supervisor does not care for him. Retreat recently conducted for team. Should we offer external training to staff? They changed the flow/responsibilities of team. Team is short staffed right now. Can we help them a day or two by working in the office? Norma has offered but they haven't taken us up on it. What drove him to decide to consider a list? All of the state schools are going to Wolfpack system. With new system, it will make FAO life easier. Why? Should we offer time management training?

Exhibit 61.

An internal Nelnet report describing services provided to Wayne State University shows that free staffing was provided as part of a package of "value-added services:"

Partnership Opportunities: For the last four weeks, the FAS team was able to partner even more closely with Wayne State by sending two employees to Detroit to help work the front counter during peak. Exhibit 62.

Other internal lender documents indicate that Sallie Mae also provided staff support and printing/mailing services to Wayne State University in connection with PLUS loans:

	<b>WSU picked</b>
<b>Sallie Mae's offering over Citibank because Sallie Mae has a human resource person in Michigan that is available to do Parent presentations, the marketing mailings were already written and available for use, they didn't have to sign a contract, Parent Answer will send a newsletter to all parents, SallieMae will do all mailings/notifications/etc. free of cost/shipping, PLUS backend borrower benefits was renegotiated/adjusted based on how much PLUS volume going to SallieMae and they already had a relationship with AMS (Sallie Mae's payment plan). AMS set-up (through Accts. Receivable)</b>	

Exhibit 63.

#### 4. Call Centers

Internal Nelnet documents show that the company offered call center services, characterized as "Financial Aid Solutions," to colleges with the expectation that the college would direct FFEL market share to the company in return. The training manual for Nelnet's "New Hire Sales Academy" describes the call center service:

Financial Aid Solutions...This service can be made available to any school where Nelnet is generating asset volume...Value to Nelnet—expand market share.<sup>24</sup>

<sup>24</sup> Citing concerns that the document cited herein contains confidential business information, Nelnet has requested that the full document not be included in the appendix.

In addition, the investigation has uncovered evidence demonstrating that, not only did Nelnet offer the Financial Aid Service to colleges with the inappropriate intent of expanding FFEL market share, it also used the service to market loan products to students. The service was described to colleges and students as a source of unbiased, impartial advice for students on financial aid matters.<sup>25</sup> However, training materials for Nelnet call center employees instruct employees to market Nelnet products to students:

Bonus Points[awarded to call center personnel for evaluation purposes] ... Up sell – Suggest Nelnet as a lender whenever appropriate. We should not talk down other lenders, only talk up Nelnet by advising of the great customer service we offer. Exhibit 64.

A lender sales report demonstrates the pervasiveness of “value-added” services in the FFEL bargaining process. The “Key Strategies” section of the sales report states “seek out more ‘needs’ of schools on visits.... find the next ‘call center’ need at large schools.” Exhibit 65. Citibank advises that this comment arose out of the representative’s visit to the University of Colorado at Denver, where Citibank had been removed from the preferred lender list. A financial aid official told the representative that Nelnet was retained as one of two preferred lenders because it provided “College Planning Center” services to the school.<sup>26</sup> Nelnet records confirm that the service was provided at the University of Colorado Denver and Health Science Center.<sup>27</sup>

In August 10, 1999 comments in a Notice of Proposed Rulemaking, the Secretary of Education made clear that services a lender provides to a college at below market cost violate the inducement prohibition:

The 1998 Amendments did not change the general prohibition that lenders cannot provide services, at less than market value, to a school in order to secure applications. In general, we believe that most goods and services that a lender provides to a school at less than their fair market value are, by definition, an inducement. 64 FR 43428.

Internal Sallie Mae emails show that it provided call center services (known as “campus assist” services) at below “actual costs” to Universal Technical Institute, to whom it was providing a comprehensive package of loans including FFEL:

<sup>25</sup> Counsel for Nelnet describes the service as one in which “Nelnet service center employees respond to the same type of financial aid inquiries the financial aid office’s staff would otherwise receive.” Letter from Nelnet Counsel to Committee Staff, April 24, 2007.

<sup>26</sup> Nelnet describes the College Planning Center (CPC) as “a comprehensive college planning service for college-bound students and their parents. The CPC provides printed materials, a website, and a call center for prospective students and their parents to assist in their college planning preparation activities. The call center is a toll-free college planning answering service staffed by Nelnet employees.” Letter from Counsel to Nelnet to Committee Staff, April 24, 2007.

<sup>27</sup> Summary materials provided by Nelnet.

**Subject:** Fwd: Re: UTI Volume (Contract)

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The addition of the campus assist costs only changes our deal by [REDACTED] so at this point we should not make any changes to the price. We need to make it clear that is just for one year and that we will increase to our actual costs then.

Thanks

[REDACTED]  
Managing Director, Strategic Sales  
[REDACTED]

Exhibit 66.

In addition, a document describing the features of Sallie Mae's School As Lender proposal to Nova Southeastern shows that the company provided call center services at a significant discount as a "value-added service:"

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#### **Custom College Answer**

Cost to Sallie Mae \$4.40 per call. NOVA pays \$15,000 per month or approximately \$1.23 per call. Gap is \$3.17 per call. Calls excepted for 2006 146,000. Cost to Sallie Mae \$460,000.

Exhibit 67.

## **II. Referral Fee and Revenue-Sharing Arrangements**

Several regulators, most prominently the New York State Attorney General, have exposed referral fee and revenue-sharing arrangements between colleges and lenders in which lenders pay the colleges based on private loan volume. Such arrangements violate college officials' fiduciary duty to provide neutral, unbiased loan advice to students, since the kickback the college receives creates a strong financial incentive to steer students towards a particular lender.

The Chairman's investigation has uncovered evidence that some FFEL lenders agreed to these private loan kickback arrangements as part of a package deal to increase, or protect, the lender's FFEL loan volume. When a referral fee or revenue-sharing arrangement is a deal "sweetener" in a negotiation between lenders and schools concerning FFEL loans, such arrangements violate the inducement prohibition.

Documents describing PNC's negotiations with Duquesne University show that private loans were a deal "sweetener" that played a role in PNC's successful bid for the university's graduate FFEL business. In January 2005, PNC submitted a bid for Duquesne's School As Lender contract for graduate FFEL loans that included an offer of Opportunity Loan funds (called "Resource Loans"):

19. The University would like its Financial Service Provider to provide an alternate loan program. If proposed, please provide an assessment of what percentage of our undergraduate and graduate students would pass the criteria for an alternative loan through your organization; the average interest rate anticipated for 2004-05, and the average fees assessed for such loans.

**PNC BANK WILL PROVIDE THE RESOURCE LOAN (ALTERNATIVE LOAN) TO ELIGIBLE DUQUESNE UNIVERSITY STUDENTS. THE RESOURCE LOAN APPLICATION AND BROCHURE CAN BE CUSTOMIZED FOR DUQUESNE UNIVERSITY, AS IT WAS LAST YEAR. (COPY ENCLOSED)**

**THE RESOURCE LOAN IS A TIERED LOAN THAT PROVIDES FOR MAXIMUM APPROVAL RATES AT THE LOWEST RATE AND FEE STRUCTURE POSSIBLE. THE APPROVAL RATE SINCE JUNE 2004 IS 74% (375/509) FOR DUQUESNE UNIVERSITY STUDENTS.**

Exhibit 68.

PNC's joint bid with the Pennsylvania Higher Education Assistance Agency ("PHEAA") prevailed, and the parties signed graduate School As Lender contract documents on July 1, 2005. (Duquesne had previously held a RFP process in 2003, which PNC also won.)

In June 2005, PNC signed an agreement with Duquesne that provided private loans to the University in return for "a referral fee of 20 basis points on the [Resource] loans."

Exhibit 59. Duquesne advises that it was paid \$10,740 under the agreement in 2006.

It is apparent from PNC's School as Lender bid and the text of the referral fee agreement that the Resource Loans and the referral fee payable on such loans were an integral part of the School As Lender negotiation between PNC, PHEAA and Duquesne. Indeed, the preamble to the Resource Loan agreement, quoted below, references the School as Lender "Loan Sale Agreement." The School As Lender agreement was signed June 6, and the Resource Loan agreement was signed on June 17:

**This Alternate Student Loan Referral Agreement is entered into this 17th day of June, 2005, between Duquesne University of the Holy Spirit ("School") and PNC Bank, National Association ("Bank").**

**WHEREAS, School and Bank have entered into a Loan Sale Agreement of even date, herewith under which School will sell to Bank certain federally insured student loans that School originates; and**

**WHEREAS, as part of the comprehensive student loan relationship between School and Bank, School is desirous of referring to Bank qualified students in need of supplemental credit for financing the cost of education at School, under alternative loan programs; and**

**WHEREAS, Bank offers an alternative, privately insured student loan program to credit eligible students that meet the referral needs of School.**

**NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:**

Exhibit 69.

Duquesne not only accepted an offer of private Resource Loans as part of a FFEL negotiation, but also agreed to receive a payment from PNC based on private loan volume, tainting not only the advice provided to its students in choosing a private loan, but also compromising the process used to select a lender for graduate FFEL loans. Instead of accepting referral fee revenue, the University could have bargained for those funds to be applied to lower interest rates and better borrower benefits for FFEL borrowers.

Duquesne advises Committee staff that a Department of Education official, counsel for the University and counsel for PNC advised the University that such referral fee agreements were appropriate. Duquesne maintains that the Resource Loans and referral fee payable on the loans was not a dispositive factor in the decision to award the graduate School As Lender deal.

Citizens Bank also had a referral fee agreement with Duquesne, under which the college agreed to “refer to [Citizens] Bank qualified students in need of supplemental credit for financing the cost of such student’s education at University” in exchange for an annual “marketing fee” equal to .5% of outstanding private loans. Exhibit 70. Citizens paid the University \$2,900 in referral fees in 2006, and the agreement was terminated by Citizens on February 27, 2007. Exhibit 71. Chase also had a referral fee agreement with Duquesne, but the university advises that no loans were made under the agreement, and it was terminated in 2006.

PNC also offered Resource Loans to Villanova University and the University of Scranton as deal sweeteners to gain FFEL business. An internal PNC memo describes how offering private loans was the price of admission for FFEL market share at both schools, since the universities “implied” that FFEL volume would be adversely affected if private loan terms were changed:

A precedent had been set as to the Resource Loan approval rate expectations of these schools: loans had been approved even if cosigners had adverse credit....PNC and Villanova had a legal agreement in place regarding this program while [University of] Scranton did not. **The overall goal was to provide a comprehensive loan package that would significantly increase PNC Bank’s core FFELP business with these institutions. As a result, we have enjoyed being the exclusive ‘Preferred Lender’ for FFELP at both of these schools.** (emphasis added)

The memo continues to discuss the universities’ reaction when PNC attempted to tighten underwriting criteria for these loans:

The schools have asked that we reconsider this decision, given the overall effectiveness of these loans programs in attracting and retaining high quality students. **These schools have also implied that our continuing ability to finance valuable freshman business, as well as other PNC business**

**relationships (i.e., corporate banking), may be impacted by our decision on this.** (emphasis added)

The memo concludes by arguing that PNC must “pay to play:”

If we do not proceed with this proposal, both the private and FFELP volume will be even lower than [sic] the above **because the schools will remove us from ‘Preferred Lender’ designation entirely.** Exhibit 72 (emphasis added).

In addition, internal SunTrust documents outline how the bank used private loan funds as leverage to gain FFEL market share. An entry on a sales report concerning Keiser College states:

We reiterated that if we get to a resolution on the private loan issues that we will want all of the volume to go to SunTrust. Their CFO does not like the idea. [School officials] want the volume to go to Wachovia because of the commercial banking issues they have had with SunTrust. The only thing that will get the volume for SunTrust is the customized private loan. Exhibit 73.

SunTrust advises that all of the school’s FFEL volume did not end up going to SunTrust. Nevertheless, offering private loans to a school in exchange for FFEL market share in this manner is squarely prohibited by the inducement prohibition.

### **III. Improper Agreements Between Lenders and Guaranty Agencies**

#### **A. New Jersey Higher Education Student Assistance Authority and Sallie Mae/Nelnet**

The inducement prohibition bans payments from lenders to “any school or other party” to increase FFEL market share. Referral fee payments by a lender to a nonprofit guaranty agency that are calculated with reference to loan volume are prohibited. The investigation has shown that New Jersey’s nonprofit guaranty agency, the New Jersey Higher Education Student Assistance Authority (“HESAA”), received such payments pursuant to Marketing and Services Agreements with Sallie Mae and Nelnet.<sup>28</sup>

The agreements provided that the Authority would perform certain “marketing and services activities” on behalf of the two lenders, including explaining loan features and borrower benefits, assisting with “application processing and...other related services as needed,” and working with Sallie Mae and Nelnet “to address and customize any specific processing or operational needs” for colleges. In return, Sallie Mae agreed to pay the Authority “a fixed fee of 1.40% of the lesser of the loan amount requested by the applicant, or (b) the loan amount certified by the applicant’s school.” Nelnet’s agreement

<sup>28</sup> The Authority also had a Marketing and Services Agreement with Brazos Student Finance Corporation. According to the Authority, “the contract was never effectuated, and, from what we can discern, no fee was paid.” Letter from The Authority’s Counsel to Committee Staff, June 6, 2007.

contained a 1% fee. These fees are payable “regardless of whether or not the loan for which the Application was submitted is ever disbursed.” Exhibit 74.

Department of Education guidance makes clear that fee payments from a lender to a guaranty agency in return for loan applications clearly violate the inducement prohibition. A February 1989 “Dear Colleague” letter from the Department addresses this issue:

Examples of Prohibited Inducements:

...

3. A lender pays another lender a ‘referral’ or ‘finder’s’ fee for loan applications referred to the paying lender, ostensibly to compensate the referring lender for administrative costs incurred in processing the applications and in advertising the availability of loans through the payee lender. The portion of that fee that exceeds reasonable compensation for the referring lender’s processing of loan applications and advertising constitutes a prohibited inducement. 89-L-129.<sup>29</sup>

Sallie Mae maintains that the agreements are legal since they reimburse the agency for expenses it incurs.<sup>30</sup> Indeed, the Agreements describe the fee payment as providing for reimbursement of expenses (“Trustee desires to compensate HESAA for such expenses,” “Trustee shall pay HESAA, as compensation for HESAA’s expenses,” “HESAA’s Expenses: HESAA represents that the Administrative Fee is reasonable compensation for performing the marketing and services activities described in Attachment A.”)

However, the fee structure of the agreements themselves, as well as other evidence uncovered by the investigation, show that the arrangements were traditional fee-for-service contracts. The amount of the fee was unrelated to the Authority’s incurred costs. As an initial matter, the agreements did not require the Authority to submit any documentation of expenses (invoices, receipts, etc.) to the paying lender to back up reimbursement amounts, and Sallie Mae confirms that it never received any documentation from the Authority of its actual expenses.<sup>31</sup>

Internal documents at Sallie Mae and the Authority show that both parties considered the payments to be fees for services rendered. An internal email describes the payments as a “marketing fee”:

SLM paid HESAA 100 basis points as a marketing fee for all loans that are guaranteed for the Sallie Mae Trust lender code.

I think there is a cap, so the total marketing fee expense is around \$ 2 million.

Exhibit 75.

<sup>29</sup> This “Dear Colleague” letter can be found at <http://www.nchelp.org/elibrary/DearPartnerLetters/Lender/1989/89-l-129.pdf>.

<sup>30</sup> In an April 27 2007 letter to the Newark Star Ledger and in earlier conversations with Committee staff, the Authority took the same position as Sallie Mae concerning the legality of the agreements. However, Counsel for the Authority now informs Committee staff that the Authority no longer holds that position.

<sup>31</sup> May 22, 2007 letter from Counsel for Sallie Mae.

Another internal Sallie Mae email indicates that the marketing fee was a product of an ongoing business negotiation, not determined by the Authority's costs:

**Subject:** NJHESAA FFELP as Sponsor

██████████ and I finally agreed on 100bp. I tried getting it a little lower on standard volume but we just kept going around in circles on this. The custom volume that is at 75bp though will remain at 75bp ██████████

Exhibit 76.

HESAA documents also describe the marketing fee as a “premium,” not an expense reimbursement. A memo entitled “Business Principles for Marketing the HESAA as FFELP Sponsor Service Model” notes that

- **HESAA as FFELP Sponsor works best when it garners a full premium of 140 basis points from the partnering lender, however, certain circumstances may require a reduction to that premium.**

Exhibit 77.

This evidence makes clear that the parties viewed the fees payable to the Authority not as reimbursements for expenses, but as standard payments under a contract. Sallie Mae cites two nonpublic letters from the Department of Education as support for its position that the payments were legal. However, both letters clearly distinguish contracts like that with the Authority from permissible contracts. In a January 1994 letter, Robert Evans, Director of the Department's Division of Policy Development, stated that “the referral fee paid by each origination lender must be based on actual administrative costs incurred in advertising the availability and distribution of loans through the payee lender.” Frank Williar, Acting Director of the Division of Policy Development, provided similar guidance in a September 1993 letter: “The referral fee must be based on actual administrative costs incurred in processing the applications and in advertising the availability of loans through the referring lender.” Exhibit 78 (emphasis in original).<sup>32</sup>

Sallie Mae has acknowledged that the Authority never submitted evidence of its actual expenses as a basis to compute the marketing fee, and there is no evidence in the documents provided by the lenders or the Authority that actual expenses were ever

<sup>32</sup> In a letter to Committee staff, HESAA describes a September 20, 1995 letter from David Longanecker, Assistant Secretary of Education, to the Consumer Bankers Association as “the equivalent of regulatory authority upon which lenders and guaranty agencies relied upon in entering into the market arrangements which have been called into question.” The Authority's position is that Longanecker's guidance established that referral fee agreements of the type entered into with Sallie Mae and Nelnet were permissible when signed, since payment was tied to the number of loan applications received (rather than the number of loans originated). If this is indeed HESAA's position, it misreads Department guidance on this issue. As described herein, the Department has made clear that referral fees payable based on loan application volume are permissible only if “based on actual administrative costs incurred in processing the applications and in advertising the availability of loans through the referring lender.” Documents provided by Sallie Mae and HESAA demonstrate that the fee was not tied to actual costs. Longanecker's letter is included in Exhibit 78.

considered in connection with payments. The Marketing Agreements with the Authority clearly constituted a prohibited inducement.

Nelnet and Sallie Mae were the only two lenders who participated in the “HESAA as FFELP Sponsor” arrangements. According to the Authority, Sallie Mae paid the agency an average of \$2.2 million annually from 2001-2006. The company paid HESAA a total of \$12,927,230. Nelnet paid \$1,670 in 2006 pursuant to the agreement.<sup>33</sup>

Apart from the marketing fee payable to the Authority, the “HESAA as FFELP Sponsor” program involved other improper inducements offered to colleges to expand the FFEL market share of the Authority and its lender partners. In order to participate in the program, colleges agreed to direct all, or virtually all, of their FFEL borrowers to a “lender sponsor” – Nelnet or Sallie Mae. In exchange, the Authority provided these colleges with an array of benefits, none of which improved students’ borrowing terms. For example, the Authority provided schools in the program with personnel, free of charge, to work in financial aid offices on an ongoing basis. An internal presentation outlines the various benefits the Authority provided to colleges in exchange for FFEL “exclusivity”:

**How HESAA as FFELP Sponsor Works**

**School signs a servicing and marketing agreement which assures the lender exclusivity for processing Stafford Loans (similar to Direct Lending).**

**In exchange, HESAA, as the guarantor, receives a higher percentage of basis points from the lender for processing the loan. This revenue is used to provide the school with direct services, such as:**

- **dedicated personnel**
- **software/technical support**
- **professional development**

Exhibit 79.<sup>34</sup>

<sup>33</sup> Summary materials provided by HESAA.

<sup>34</sup> HESAA informs Committee staff that it has found evidence suggesting this slide is from a draft document. HESAA cannot determine whether the final version of this presentation was ever distributed outside the Authority or presented to other parties. HESAA further advises that “HESAA never signed an[] agreement with a school for servicing and marketing under the HESAA as FFELP sponsor program.” Whether or not HESAA signed exclusivity arrangements with schools, documents provided by Sallie Mae, Nelnet and HESAA indicate that, for many schools examined herein that were part of the program, schools

An internal memo makes clear that the Authority provided free staff as a reward for FFEL market share:

- For every \$10 – 12 million in loan volume, HESAA has the ability to offer a dedicated staff member to the school. Therein lies the key element of the HESAA as FFELP Sponsor program: using revenue created by the school's loan volume to provide the highest service level in the industry.
- Although originally used as a service model to repatriate Direct Loan schools, HESAA as FFELP Sponsor should be introduced to virtually all two and four-year schools in New Jersey.

Exhibit 80.<sup>35</sup>

A sales report describes initial meetings with Seton Hall about its transition from Direct Lending to the “HESAA as FFELP Sponsor” program and notes that the Authority had begun the search process for four employees it paid to work at Seton Hall:

██████████ called me back and apologized for not reaching out sooner. In speaking with ██████████, she had new language and a few new bullet points for our “Letter of Understanding”. In this conversation, ██████████, once again stated, “We’re doing this” referring to the conversion from Direct Loans to FFELP. From what has transpired, the agency feels confident enough to begin the search process for four vacancies. Ads will be published in at least five major Sunday editions of New Jersey papers. Client Services is making the changes to the “Letter of Understanding”. More discussion with ██████████ is needed before this document can be finalized.

Exhibit 81.

A memo addressed to Rutgers University illustrates how the program was marketed based on “services” provided to schools, rather than on benefits to student borrowers:

The HESAA as FFELP Sponsor model incorporates a Marketing and Service Agreement between the Guaranty Agency and two of the highest volume lenders in the State. This arrangement provides an extra source of revenue to HESAA to be used to provide an unprecedented range of services to the school including dedicated HESAA staff for processing all Rutgers’ student loans, customized marketing and informational pieces, and systems and operational support with customized training.

participating in the program directed substantially all of their FFEL volume to HESAA and its lender partners. See, e.g., Exhibit 89.

<sup>35</sup> HESAA advises that it has “not determined if this was the final version of the document approved by executive staff and to what extent, if any, it was reviewed by the legal department or relied upon by staff in marketing the program.”

Exhibit 82.

The Authority's presentations to colleges about the program illustrate that the program was marketed based on the additional revenue it would provide to colleges:

***HESAA as FFELP Sponsor –  
Institutional Benefit \$1,000,000***

Exhibit 83.<sup>36</sup>

<b>➤ Revenues Generated by NJIT's FFELP Participation</b>	
	<b>HESAA As FFELP Sponsor</b>
<b>Year 1</b>	<b>\$ 281,725</b>
<b>Year 2</b>	<b>\$ 309,968</b>
<b>Year 3</b>	<b>\$ 337,926</b>
<b>Year 4</b>	<b>\$ 367,025</b>
<b>Year 5</b>	<b>\$ 397,312</b>

Exhibit 84. HESAA maintains that this slide refers to additional revenues that would flow to the Authority from a school's participation in the program.

The Authority's sales reports and presentations reflect that, in exchange for the benefits offered by the "HESAA as FFELP Sponsor" program (including free staff), colleges agreed to an "exclusive" arrangement in which all FFEL loan volume would be directed to lender partners such as Sallie Mae or Nelnet.

- Visited the Lincoln Tech. Mahwah campus yesterday to review the HESAA as FFELP sponsor process with the campus director. The Mahwah location has given us volume in the past, but is now expected to give us all of the new volume, per the agreement. I am providing them with Stafford and PLUS MPN's this coming week. I also took advantage of the opportunity to visit the Mahwah/Cittone campus, which next door to Lincoln, to touch base with the Director, with whom I have a pretty good relationship. He asked for some pre-printed MPN's, which I will generate this week

Exhibit 85.

<sup>36</sup> HESAA maintains that this slide was written incorrectly, and that the \$1 million benefit refers to a benefit flowing to the Authority from a school's participation in the program.

<b>Additional Resources Provided to University</b> <b>(Based on \$130 million in annual Student Loan Volume)</b>	
<b>HESAA as Guarantor</b>	<b>\$ 250,000</b>
<b>HESAA as FFEL Sponsor</b> (all student volume)	<b>\$ 1,000,000</b>
<b>HESAA as FFEL Sponsor and School as Lender for Graduate Borrowing</b>	
<b>HESAA as FFEL Sponsor</b> (undergraduate volume)	<b>\$ 770,000</b>
<b>Rutgers as Lender</b> (Revenue Direct to Rutgers)	<b>\$ <u>1,125,000</u></b>
<b>Total Additional Resources</b>	<b>\$ 1,895,000</b>

Exhibit 86.<sup>37</sup>

“Letters of Understanding” between HESAA, Sallie Mae, and schools demonstrate that Sallie Mae exclusivity was an integral part of the program. For example, the agreement with Georgian Court specified the following:

“HESAA as FFELP Sponsor” will be Georgian Court’s exclusive FFELP loan provider. Under the “HESAA as FFELP Sponsor” program, the lender for FFELP loans will be The Sallie Mae Education Trust (802218). Through this arrangement, HESAA is able to provide the most expeditious delivery of Federal Stafford Loans available today.

Exhibit 87.

An internal Sallie Mae email demonstrates that the company considered schools participating in the program to have agreed to an exclusive arrangement for FFEL. The email also illustrates how Sallie Mae used Opportunity Loan funds as a deal “sweetener” to maintain exclusive lender status:

>>> [REDACTED] 6/22/2006 4:45:41 PM >>>

I am writing with two requests related to Seton Hall University. As you may both know, we brought Seton Hall out of Direct Lending a number of years ago and continue to maintain an exclusive with them through the Sallie Mae Education Trust under the HESAA as FFELP Sponsor partnership. For AY 05/06, we have done about \$62 million in FFELP and another [REDACTED] in Signature and LAWLOANS volume.

One of the reasons we have been successful in maintaining our business with Seton Hall has been our flexibility in meeting their needs. Specifically, we have developed private loan programs that they have valued greatly, including a special program offered by SLM Financial for former students as well as a SLM Financial-based Opportunity Loan which the school has also used for formerly enrolled students.

Exhibit 88.

<sup>37</sup> In a letter to Committee staff, HESAA maintains that the word “‘University’ could be a misprint. It clearly should read ‘State.’” HESAA further advises that the document “may be a draft” and that the “conclusion” of the slide “is inaccurate.” The Authority believes that the figures refer to revenue generated by the program that flows to HESAA “which it in turn uses...to administer programs which benefit the institution.”

Market share data for Seton Hall show that, since the school began participation in the program, Sallie Mae's share of Stafford loans has been above 99%. A Sallie Mae internal email lists participants in the program as of March 2006 and makes clear that most of these colleges directed all FFEL loan volume to Sallie Mae:

Our HESAA as FFELP Sponsor volume is concentrated in a handful of schools that process over [REDACTED] of their volume with us (considered exclusives). Included in that group are:

Seton Hall University  
Montclair State University  
The College of New Jersey  
Berkeley College (NJ only)  
St. Peter's College  
Drew University  
Thomas Edison State College

[REDACTED]

Also, Rowan University, which is leaving DL through the HESAA as FFELP Sponsor program, will deliver another [REDACTED] in FFELP next year that we would have to add

The rest of the volume comes in small amounts at small schools, none of which are HESAA as FFELP Sponsor exclusives.

Exhibit 89.

Other documents uncovered by the investigation also show that, as discussed in the Opportunity Loans section above, the Authority and Sallie Mae cooperated to use Opportunity Loan funds as leverage to gain FFEL market share. An internal email indicates that Sallie Mae and the Authority offered Opportunity Loan funds as part of a package designed to have Rowan University leave the Direct Loan program:

Rowan University, a [REDACTED] Direct Loan school is looking to come out of Direct Loans and work with Sallie Mae and the NJ Agency. The school wants a Zero Fee option and wants to work with the NJ Agency for both the guarantee process and as a lender. We ask that you contact the NJ Agency and work out an arrangement where we can have a Wrap Around option for the NJ agency Lending Program. The NJ Agency understands that they need to take a price cut off of their contract price which is 140 BP and they have indicated 70 BP would work. We also want to let everyone know that we have offered them \$500,00 in Opportunity Loans that Rowan has requested.

Exhibit 90.

The Authority has informed Committee staff that all Marketing Agreements with lenders have been terminated and its staff has been withdrawn from colleges. In addition, the Authority is preparing a code of conduct governing its future FFEL operations that will prohibit such inducements.<sup>38</sup>

<sup>38</sup> Conversation with Counsel for the Authority, July 16, 2007.

One of the documents of greatest concern uncovered by the Chairman’s investigation is an internal Sallie Mae sales report indicating that HESAA threatened to withhold state grant funding from a college if it did not use HESAA as its FFEL guarantor.<sup>39</sup>

**College of St. Elizabeth**

Waiting for feedback/answer on Proposal. HESAA said if you use another guarantor besides the state guarantor it will effect the Tag Program. 2 people confirm this statement.

The “TAG” Program is New Jersey’s state grant program, funded by taxpayer money.<sup>40</sup> Interviews by Committee staff about this document indicate that HESAA told school officials that TAG funds would be provided to the school and processed more slowly if HESAA were not the school’s guarantor. Based on discussions with its personnel (none of whom were present at the meeting with the college), HESAA maintains that the above account simply refers to the fact that when schools opt not to use HESAA as a guarantor, less revenue flows to the Authority and its ability to administer TAG is negatively impacted.

#### **IV. Steering**

In a School As Lender arrangement, a college originates loans to its graduate students and enters into an agreement with an FFEL lender to sell those loans at a future date for a premium over face value. Such deals can create significant revenue for a college, and the risk of conflicts of interest is high – colleges officials may be tempted to “steer” students toward the School As Lender program, or may encourage the financial aid office to do so, in order to maximize revenue. New School As Lender arrangements were outlawed by the Higher Education Reconciliation Act of 2005, primarily because of concerns about the conflicts of interest between the college’s role as a lender seeking the highest sale premium for its loans and its role as a fiduciary for its students.<sup>41</sup>

Several internal reports from other colleges describe similar pressure on financial aid officers to steer students towards the revenue-generating School As Lender program:

<sup>39</sup> Citing concerns that the document cited herein contains confidential business information, Sallie Mae has requested that the full document not be included in the appendix.

<sup>40</sup> HESAA’s website describes the TAG program in this way: “New Jersey’s Tuition Aid Grant (TAG) program is one of the nation’s largest financial aid programs, and New Jersey ranks among the top states in providing aid for needy students. Depending on your need, a TAG award can cover close to the full cost of tuition at a public college or a portion of that cost. The program also offers sizeable awards to attend in-state private institutions. One in every three full-time New Jersey students receives TAG, and awards may be used at nearly all New Jersey postsecondary institutions, including community colleges, state colleges and private schools.”

[www.hesaa.org/students/aid\\_programs/specific.asp?program\\_id=13&heading\\_name=\\*&type=Grants](http://www.hesaa.org/students/aid_programs/specific.asp?program_id=13&heading_name=*&type=Grants)

<sup>41</sup> “The possibility of an increasing number of schools becoming FFELP lenders and receiving revenues from the loans they make has raised concerns. Specifically, questions have been raised about whether it is appropriate for schools to become lenders, given that the both determine students’ eligibility for loans and in some cases set the price of attendance.” GAO-05-184, “Federal Family Education Loan Program: More Oversight Is Needed for Schools That Are Lenders.”

[Financial Aid Officer] from U[niversity] of [Arizona] Law called ... looking for assistance in doing a comparison of lenders. Her dilemma is that U of AZ is trying to strong arm them (and I think their Med school) into using school-as-lender. Exhibit 93.

Citibank has an exclusive alternative loan program with Penn. They just signed a three [year] contract that goes until 2008...In the past [Student Financial Services Office] did not want [Northstar] or any other lender competing with their own loan program. They had no interest in setting up an electronic loan process with us...making it inconvenient for students to borrow from us.” Exhibit 94.

[Case Western Reserve] Law School forced to include both Key Bank and Case [School As Lender] programs on [Preferred Lender List] because of political pressure. Exhibit 95.

Too much pressure on the financial aid office [at Kansas City University of Medicine and Biosciences] to promote [School As Lender]. Exhibit 96.

[Florida State University financial aid official] explained that [Director of Financial Aid] sees [FFEL lender] as a threat to [the University’s School As Lender program] because [lender] offer[s] a better product and we don’t charge fees. She added that he does not see the other lenders on the list as threats to SAL because they are less competitive than the FSU loan program. FSU charges a 2% origination fee, 0% default fee, offers a 0.50% after 12-months of on-time payments, an additional 0.50% interest rate reduction after every 12-months of on-time payments up to a total of 2% reduction for 48-months of on-time payments, a [Financial aid official] conveyed that she feels [lender] has a far superior loan program compared to the FSU program however the [financial aid administrators] have been told they need to promote the SAL. It’s an uncomfortable position because [the official] is torn between what is in the best interest of the school and what is in the best interest of the student.<sup>42</sup>

Other documents uncovered by the investigation show that college administrators require financial aid professionals to steer students to particular lenders.

[Professional Career Institute] is committed to their current [preferred lender list] partners. They do not want to reduce the volume that either of these lenders will receive...This school is a Kaplan owned property w/Sawyer College. **The corporate office mandated that this campus be exclusive w/Citibank and Edfund.** Exhibit 97. (Emphasis added)

[Sawyer College Merrillville] was recently forced by their corporate office to go w/Citibank exclusively. They do not approve of this decision, but they have no

<sup>42</sup> Citing confidentiality concerns, the lender that generated this sales report has requested that the full document not be included in the appendix.

alternatives. Exhibit 98.

It is appropriate, and important, for college financial aid officers to provide guidance to students about which lender offers the most competitive loan terms, but any effort to assign a predetermined portion of loan volume to a particular lender crosses the line between legitimate advice-giving and improper steering.

An internal sales narrative shows that officials at Bradley Academy for the Visual Arts dictated that students only be permitted to borrow from Sallie Mae lenders:

Met with Franci Jackson, Director of Financial Aid. She told me that she has finally received ‘word’ that the school will start to use only Sallie lenders: Bank One, SLMA, Nellie, and another lender she couldn’t remember. Student Loan Funding, she thought. She also said that any new apps coming in that aren’t from one of those lenders, the school would contact the student to have them complete another app. Exhibit 99.

An internal email shows apparent cooperation between Sallie Mae and the Corporate Director of Financial Aid at Universal Technical Institute to restrict students’ choices for a private lender:

**I had a long conversation with [REDACTED] this morning about the SLX offer and about a private loan lender list that some folks tried to get out to the campuses and out on the UTI website. This list did not include Sallie Mae. The reason that the private loan list which included Wells Fargo, Chase, Bank of America and Astrive was produced was that if Sallie Mae turned down a student for a Signature, Recourse/Discount or Opp Loan that the student could try these other options. This list was produced without [REDACTED] knowledge and as soon as she found out she nipped it in the bud. She told me by voice mail a few minutes ago that she did not know how long she could keep this piece from being produced and distributed.**

Exhibit 100.

A report on the University of Oklahoma illustrates the potential harm to students’ financial interests that can result from improper “steering:”

[University of Oklahoma] also limits exposure to zero-fee lenders to students because they do not want to deter students from selecting main lenders as well as [School As Lender] product that they use in conjunction with OU central campus. Exhibit 101.

It appears that the university’s appetite for revenue outweighed its concern for its students’ financial best interests.

## **V. Restrictions on Neutral Financial Aid Advice**

The investigation has also uncovered agreements between colleges and lenders that inappropriately restrict, or seek to manipulate, the advice that financial aid officers provide to students. On many occasions, colleges have traded away their ability to provide unbiased advice to students in return for benefits from lenders.

Such agreements impermissibly interfere with the fiduciary duty that college officials owe to students to provide unbiased advice on higher education financing. They also violate the Higher Education Act's prohibition on inducements. When a college surrenders the right to recommend any lender to their students, they provide something of value to the lender – an exclusive marketing opportunity. Such bargains violate specific regulations of the Higher Education Act.

No...additional interest of any kind may be...extended to any eligible lender...in order to...secure funds for making loans; or induce a lender to make loans to either the students or the parents of students of a particular school or the parents of students of a particular school or particular category of students or their parents. 35 CFR 682.212 (a)(1) and (2).

### **A. Consolidation Exclusivity**

A slide from a Sallie Mae presentation to Nova Southeastern University shows that Sallie Mae was willing to give an additional premium on loan sales – in order to obtain exclusivity for consolidation loans.

## **Loan Consolidation Partnership**

Sallie Mae is willing to provide NSU with an additional .05% premium on sales of Stafford loans in return for exclusive endorsement and promotion of Sallie Mae's loan consolidation program to NSU students

- Benefits of the partnership
  - Sallie Mae Campus programs manager assigned to NSU to assist with all loan consolidation planning and activities
  - Campus programs team provides a consultative approach with students to thoroughly explain loan consolidation and all repayments options, allowing borrowers to make the best decision for their individual situation
  - Online and concierge services provide NSU student loan borrowers with the most convenient and accessible service available

Exhibit 102.

Several Sallie Mae School As Lender arrangements explicitly restrict school officials from endorsing or promoting a competitor's consolidation loan product. For example, the School As Lender agreement with St. Mary's University (San Antonio, TX) commits the school "not to endorse or promote in any manner any Consolidation Loan product offered by any person or entity that is not an affiliate of Sallie Mae." Exhibit 103. In addition, if a student consolidates a loan sold to Sallie Mae with another lender, and that lender is "endorsed or promoted in any manner" by St. Mary's, the school must pay Sallie Mae a substantial penalty. Exhibit 103.

Such exclusivity provisions also appear in Letters of Understanding (“LOU”) between Sallie Mae and several schools. For example, an LOU between Sallie Mae and the University of Southern California states:

USC will work with Sallie Mae to promote Sallie Mae’s loan consolidation program to USC students that have outstanding loans with Sallie Mae to ensure that borrowers are aware of their consolidation program. USC will not endorse or sponsor a competing loan consolidation program that is marketed to students that have outstanding Sallie Mae loans under this program. Exhibit 104.

Obviously, such restrictive provisions and penalties significantly discourage financial aid officers from giving unfettered financial advice to students. To put it simply, financial aid officers should be free to counsel students to consolidate their loans with whichever lender they think best without fear of incurring a penalty or breaching a contract.

Similar exclusivity provisions also appear in Nelnet’s School As Lender agreements. For example, its agreement with Wayne State University prohibited the university from

directly or indirectly ...mak[ing] or attempt[ing] to make consolidation loans to any borrower on any Eligible Loan sold by Lender pursuant to the terms of this Agreement, or use or transfer to any third person or entity any information with respect to any borrower on any Eligible Loan sold hereunder. Exhibit 105.

The purpose behind such provisions is made clear in Bank of America’s agreement with Tulane University on private “GATE” loans. Bank of America describes the GATE program as one in which “participating schools may elect to undertake some of the risk of loans to their less creditworthy students.” Letter from Bank of America, May 24, 2007. Contract documents make clear that GATE loans are a type of “Opportunity Loan” which can be offered by the university to students who would otherwise not meet underwriting criteria. (Under GATE agreements, the college agrees to share default risk for students with low credit scores.) The GATE loan agreements that schools sign restrict school officials from advising student private loan borrowers to consolidate their loans, and the agreements make clear that the Bank’s profitability is the reason for this restriction:

2.11. The School acknowledges that causing prepayment of GATE Loans may undermine the financial viability of Securitization Transactions sponsored by NCT, will likely reduce the value of the special purpose entity engaged in the Securitization Transaction, and will likely decrease the value to NCT of its participation in the GATE Program. Accordingly, the School shall not solicit Borrowers for loans to consolidate GATE Loans and shall not provide any person with a list of Borrowers for the purpose of soliciting Borrowers for consolidation loans.

Exhibit 106.

Sallie Mae’s annual report also describes how consolidation within its loan portfolio undermines profitability and, in turn, the yields on its debt securities. See Sallie Mae 2005 10K, p.91.<sup>43</sup> Such financial data explain why lenders seek to restrict students’

<sup>43</sup> Sallie Mae’s 2005 10K can be found at <http://www.salliemae.com/NR/ronlyres/98EB09F8-712E-41E5-B14B-B694791574F9/4372/200510K.pdf>.

ability to consolidate loans by prohibiting school officials from recommending such loans. By agreeing to such provisions, colleges are effectively surrendering students' right to unbiased financial aid advice in exchange for a source of tuition revenue.

### **B. *Other Restrictions***

Perhaps the most obviously harmful agreements are those in which a lender explicitly restricts college officials from recommending other types of loans with more generous borrower benefits or interest rates. Sallie Mae's 2004 Letter of Understanding with the University of Southern California School of Dentistry contains provisions severely restricting university officials from recommending better borrower benefits. After describing two Sallie Mae benefit packages, the agreement specifies that "[b]oth packages will be offered to all eligible students. However, USC School of Dentistry will counsel an individual student to select only one package for all of his/her FFELP loans." Exhibit 107. The agreement goes on to say: "USC School of Dentistry will not take actions that are specifically designed to encourage students to replace current Sallie Mae loans with the zero fee option."<sup>44</sup> Exhibit 108. This provision also appears in a 2003 Letter of Understanding with all schools within the University other than the business and dental schools. Exhibit 109. Counsel for USC has advised Committee staff that head financial aid officials at USC have stated that they did not implement the provision of the agreement concerning the "zero fee option."<sup>45</sup>

### **C. *Exclusive Licensing or Marketing Agreements***

Licensing agreements or marketing agreements in which a college agrees to promote the products of one lender to the exclusion of others are equally inappropriate, even if such agreements contain a carveout for financial aid officers. Nelnet's Licensing Agreement with the University of Detroit Mercy grants Nelnet the "exclusive license and rights" to use certain University "logos, tradenames, trademarks, and other intellectual property" and obtain lists of members of the University alumni association in order to market consolidation loans. Exhibit 110. The agreement also permits Nelnet to

- "place links to Nelnet websites on the University's internet website,"
- "engage in marketing campaigns directed at University members and potential members...on campus,"
- "advertise in University publications." Exhibit 110.

In addition, the agreement was amended to pay the University a per-application fee for each successful private consolidation loan application. Nelnet agreed to pay the University \$50 for each "completed private consolidation loan made by Nelnet to an applicant identified on the Member Lists pursuant to the License Agreement." Exhibit 111. Nelnet advises that the company paid \$5,000 to the University pursuant to the agreement.

<sup>44</sup> Federal law requires that lenders pay origination fees to the government be paid on federally-guaranteed loans. Some lenders opt to pass these fees along to borrowers, while others do not. When a lender chooses not to pass along the fee to borrowers, the loan is termed "zero fee."

<sup>45</sup> Correspondence with Counsel for USC, 7/21/07.

A similar Nelnet agreement with Union College gives the company the exclusive right to market consolidation loans to students. Exhibit 112. In return, Nelnet agreed to pay the College \$2500 initially, \$2500 annually, and \$100 for each “completed and signed Consolidation Loan application[.]”<sup>46</sup> Exhibit 112. The agreement was amended to provide for an additional \$50 fee per application for a Private Consolidation Loan in exchange for exclusive marketing opportunities for Nelnet. Exhibit 113.

The agreement was also amended to include federally-insured PLUS loans within its scope. Under this amendment, Nelnet paid the college a per-application referral fee for “every four completed PLUS applications.” In return, the college provides the same commitments “with respect to marketing and promoting Nelnet PLUS Loans” that it agreed to undertake with respect to consolidation loans. Exhibit 114. This agreement directly contravenes the inducement prohibition, which forbids a lender from “offer[ing]...payments...to any educational institution or individual in order to secure applicants for loans under this part.” Nelnet advises that no payments were made to Union College pursuant to the affinity agreement or its addendum.<sup>47</sup>

JPMorgan Chase’s Marketing Agreement with Youngstown State University similarly granted the bank an exclusive right to market federal and private consolidation loans and private post-secondary education loans to University graduates.<sup>48</sup> The University agreed to provide the lender with lists of alumni and “graduating students” and gives the lender the exclusive right to use the University’s “name, trademarks, servicemarks, copyrights and logo” to promote and market its consolidation and private loans to students and graduates. In return, eGrad pays the University “List Rental Fees” of \$6,000 a year. Exhibit 115. The bank’s agreements with other schools pay up to \$20,000 per year. Like the Nelnet agreements, the Marketing Agreement gives the lender the right of first refusal if the University decides to offer its graduates other types of loan products:

To the extent during the Term hereof, the Office of Alumni Relations desires to offer graduates other educational finance products, such as, but not limited to 529 Plans or PLUS Loans, eGrad shall be provided the right of first refusal to provide such services. Furthermore, if the Office of Alumni Relations desires to offer Graduates services targeted at recent graduate, if eGrad is then offering any of the desired products or services, the Office of Alumni Relations shall provide eGrad with an opportunity to submit a proposal to be the provider of such products and services. Exhibit 115.

Chase advises that all alumni association agreements were terminated effective May 15, 2007.

<sup>46</sup> The per application fee was not payable for the first 25 completed consolidation applications.

<sup>47</sup> June 25, 2007 conversation with Counsel for Nelnet.

<sup>48</sup> The agreement is with a Chase subsidiary, eGrad, which was acquired in 2004 by Collegiate Funding Services (“CFS”). CFS was subsequently acquired in March 2006 by Chase.

#### **D. Alumni Association Affinity Agreements**

Documents uncovered by the investigation show that “affinity agreements” with schools and their affiliated alumni associations are widespread in the industry. An email from an official at Buffalo State University illustrates the scope of such agreements:

[M]y alumni office just called. Collegiate Funding Services, CFS [purchased by Chase in March 2006] wants to enter into an agreement with the alumni office where they market consolidation loans to our graduates. In exchange they will monetarily compensate the alumni association. When I cautioned her, stating that this may be an illegal inducement, she rattled off names of other schools that have such an arrangement. Is this legal? Exhibit 116.

Nelnet had affinity agreements with several alumni associations. A September 2002 agreement with the Georgia State University Alumni Association required the Association to “furnish certain marketing services to Nelnet to assist in Nelnet’s efforts to originate Consolidation Loans, and market other Education Finance Products.” The Association agreed not to allow any other student lender to use its logos or have access to its member lists. The marketing services the Association agreed to provide included:

- (1) providing access for Nelnet to place links to websites on the Association’s internet website.
- (2) permitting Nelnet to engage in marketing campaigns in conjunction with the Association, directed at Association members and graduates twice each year.
- (3) providing access for Nelnet to place marketing materials year-round in the lobby of the Association’s office;
- (4) Featuring Nelnet separately in mail and email newsletters to members and in the contents of Association publications;
- (5) providing access for Nelnet to distribute various marketing materials furnished by Nelnet in conjunction with the Association,
- (6) featuring Nelnet in a full page or one-half page advertisement every issue of Georgia State Magazine;
- (7) mention Nelnet in 4 issues of the Alumni Association’s monthly electronic newsletter;
- (8) providing possible opportunities to have tables at future Alumni Association events.

In return, Nelnet agreed to pay the Alumni Association \$20,000 annually plus \$100 “for fully completed and signed Consolidation Loan applications which are ready for guarantee and which are received by Nelnet...as a result of the marketing efforts provided by the Association.”<sup>49</sup> Exhibit 117. Nelnet has paid \$140,900 to the association pursuant to this agreement.

<sup>49</sup> The per-application fee is not payable for the first 250 applications received. Payment of the fee is not contingent on whether the application is “ultimately accepted by Nelnet for a Consolidation Loan.” Exhibit 117.

Since June 2002, Nelnet has had similar agreements with the University of Nebraska-Lincoln Alumni Association, under which the Association agreed to “perform the following promotional efforts on behalf of Nelnet:”

- (i) Nelnet and/or Union Bank and Trust Company, as program manager of Nebraska Educational Savings Plan Trust, d/b/a College Savings Plan of Nebraska (“CSPN”) will be a “presenting sponsor” and exclusive sponsor of the Tour Across Nebraska with the Nebraska Alumni Scarlet and Cream Singers;
- (ii) Nelnet and/or CSPN will be the “presenting sponsor” and exclusive sponsor of the Nebraska Legacy Program through 2004;
- (iii) Each year Nelnet and/or CSPN will be a Bronze Level Sponsor of the Breakfast of Champions, recognizing Nebraska’s top eighth grade students;
- (iv) Separate marketing inserts for Nelnet and CSPN will be included once each year in statements of the First USA Husker Visa Card to all unique card holders;
- (v) Nelnet and CSPN shall have separate tabling rights at all home “Husker Huddles” at the Wick Alumni Center;
- (vi) A buckslip will be placed in new member kits to all new and renewing Annual Members each year on behalf of both Nelnet and CSPN; and
- (vii) Nelnet and CSPN shall be included separately in editorial content of the Alumni Resource Guide as newly featured partners.

- (i) providing access for Nelnet to place links to websites on the Association's internet website;
  - (ii) creation and maintenance (on a periodic basis as reasonably requested by Nelnet) of Member Lists, including current names, phone numbers, residential addresses and email addresses, via magnetic tape, cartridge, electronic transmission or other mutually agreed format, which shall be made available to Nelnet;
  - (iii) permitting Nelnet to engage in marketing campaigns in conjunction with the Association, directed at Association members and graduates twice each year;
  - (iv) selling to Nelnet full-page advertisements in all Association publications for the regular fees and costs in such publication for an aggregate advertising fee of \$5,000 per year due annually;
  - (v) providing access for Nelnet to place marketing materials year-round in the lobby of the Association's offices each year;
  - (vi) Nelnet will be separately featured in mail and email newsletters to members and in content of Association publications; and
  - (vii) providing access for Nelnet to distribute various marketing materials furnished by Nelnet in conjunction with the Association.
- i. Separate marketing inserts for Nelnet and / or Union Bank and Trust Company, as program manager of the Nebraska Educational Savings Plan Trust, d/b/a College Savings Plan of Nebraska ("CSPN") will be included once each year in statements of the Chase "formerly First USA" Husker VISA Card to all unique card holders, if the opportunity is available;
  - ii. Nelnet and CSPN shall have separate tabling rights at all home "Husker Huddles" at the Wick Alumni Center; and,
  - iii. Information regarding Nelnet's services and the CSPN will be made available to young alumni and renewing Annual Members through the Association.

Exhibit 118.

As with the Georgia State University agreement, in exchange for these services, Nelnet paid the Alumni Association royalties upfront and fees for each consolidation loan application. Nelnet has paid the Association a total of \$994,820 pursuant to these agreements.

Nelnet has advised Committee staff that, pursuant to a letter sent to alumni associations on July 17, 2007, all affinity and license agreements with the associations will be terminated as of August 14, 2007.

## **VII. Conclusion**

As this evidence makes clear, many FFEL lenders engage in marketing practices that violate both the spirit and the letter of the inducement prohibition of the Higher Education Act. Vigorous enforcement of existing law is needed to end these flagrant abuses and protect the interest of millions of parents and students struggling to afford a college education.